

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Structure and Practices of the Video Relay Service Program)	CG Docket No. 10-51
)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123
)	

REPLY COMMENTS OF CTIA-THE WIRELESS ASSOCIATION®

CTIA-The Wireless Association® (“CTIA”)^{1/} hereby submits these reply comments in the above-referenced proceedings in response to the Public Notice issued by the Federal Communications Commission (“Commission”) regarding the Interstate Telecommunications Relay Services (“TRS”) Fund (“Fund”) payment formulas and funding requirement submitted by Rolka Loube Saltzer Associates (“RLSA”) for the July 2013 through June 2014 Fund year.^{2/} The initial comments in response to the *Public Notice* agree that RLSA overestimated the required

^{1/} CTIA—The Wireless Association is not a typographical error. *City of Arlington v. FCC*, 569 U.S. ___, ___ (2013)(slip op. at 3, n.1). More properly, CTIA is an orphan initialism. CTIA was founded in 1984 as the Cellular Telecommunications Industry Association. In 2000, CTIA merged with the Wireless Data Forum and became the Cellular Telecommunications & Internet Association. In 2004, we changed our name to CTIA-The Wireless Association®. This name better represents CTIA’s diverse membership of service providers, manufacturers, wireless data and Internet companies, as well as other contributors to the wireless universe. More information about CTIA is available on the Association’s website at <http://www.ctia.org/aboutCTIA/>.

^{2/} See *Rolka Loube Saltzer Associates Submits Payment Formulas and Funding Requirement for Interstate Telecommunications Relay Services Fund for the July 2013 Through June 2014 Fund Year*, Public Notice, CG Docket Nos. 10-51, 03-123, DA 13-1137 (rel. May 17, 2013) (“*Public Notice*”), Rolka Loube Saltzer Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123, 10-51 (filed May 1, 2013) (“*2013 Fund Estimate*”).

funding for the Internet Protocol Captioned Telephone Service (“IP CTS”) and consequently, the required carrier contribution rate.^{3/}

Accordingly, CTIA respectfully submits that:

- The Commission should not adopt RLSA’s demand projection for IP CTS – most notably because it fails to take into account the Commission’s recent actions to curb Fund waste, fraud and abuse – and should instead adopt the more realistic demand projection of 181 million minutes, based on industry estimates.
- The Commission should recalculate the Fund size and contribution rate based on those more realistic demand projections.
- The Commission should reevaluate the demand projections in six months to determine the impact of its recent actions, and require RLSA to provide updated projections covering the last six months of the Fund year, and re-adjust the contribution factor at that time if necessary.

Implementing changes to the projected Fund size and contribution rate consistent with CTIA’s recommendations will help ensure the availability of accessible communications services to legitimate users and avoid imposing an unreasonable burden on the consumers who fund TRS.

^{3/} See Comments of Hamilton Relay, Inc., CG Docket Nos. 10-51, 03-123 (filed May 31, 2013) (“Hamilton Comments”); Comments of IDT Telecom, Inc., Intermedia.net, Vocalcity, Inc. and Vonage Holdings Corp., CG Docket Nos. 10-51, 03-123 (filed May 31, 2013) (“IDT Comments”); Comments of Independent Telephone & Telecommunications Alliance, CG Docket Nos. 10-51, 03-123 (filed May 31, 2013) (“ITTA Comments”); Comments of NobelTel, LLC, CG Docket Nos. 10-51, 03-123 (filed May 31, 2013) (“NobelTel Comments”); Comments of Sorenson Communications, Inc. and CaptionCall LLC, CG Docket Nos. 10-51, 03-123 (filed May 31, 2013) (“Sorenson Comments”); Comments of United States Telecom Association, CG Docket Nos. 10-51, 03-123 (filed May 31, 2013) (“USTelecom Comments”). See also *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order and Notice of Proposed Rulemaking, 28 FCC Rcd 703 (2013) (“IP CTS Order”).

I. INTRODUCTION AND SUMMARY

CTIA member companies provide critical services that enable persons who are deaf or hard of hearing to utilize TRS services conveniently and economically in order to communicate on an equivalent basis with conventional voice telephone users. Not only do CTIA member companies provide wireless handsets, smartphones and tablets that are capable of supporting accessibility solutions, but they also offer a variety of services and applications – such as web and wireless captioned services, instant message relay, and relay conference captioning – and an array of voice, data and text services designed specifically for persons with disabilities. CTIA therefore strongly supports the Commission’s efforts to fund services that enable consumers to enjoy the accessible products and services offered by wireless providers.

While CTIA supports ensuring that deaf and hard of hearing consumers have the services they need to participate in today’s communications ecosystem, it believes the Commission should carefully evaluate any proposal that would result in increased costs of wireless services to consumers. Contributions to the TRS Fund come increasingly from wireless providers and, ultimately, from consumers of wireless services.^{4/} Wireless consumers are already paying an average of 17.18 percent in combined state and federal taxes and fees on wireless services.^{5/} Because the estimates in the *2013 Fund Estimate* will more than double the rate that wireless companies – and ultimately consumers – must pay to the TRS Fund, CTIA agrees with the commenters that the Commission must reject RLSA’s assumptions. Instead of imposing a

^{4/} See *Local Telephone Competition: Status as of December 31, 2011*, Industry Analysis and Technology Division, Wireline Competition Bureau 4-5 (January 2013) (stating that telecommunications traffic is shifting from wireline to wireless); *Trends in Telephone Service*, Industry Analysis and Technology Division, Wireline Competition Bureau (September 2010) (indicating that, while consumer expenditures for landline telephone are decreasing, expenditures for wireless are increasing).

^{5/} Scott Mackey, *Wireless Taxes and Fees Continue Growth Trend*, STATE TAX NOTES (Oct. 2012), available at <http://www.ksefocus.com/wordpress-content/uploads/2012/11/mackey-state-tax-notes.pdf>.

contribution factor that is more than double today's, the Commission should base the contribution factor on industry projections of IP CTS use and reevaluate the needs of the TRS Fund in six months, after the Commission and RLSA are able to consider additional data which reflects the Commission's recent rule changes.

II. DISCUSSION

A. RLSA's Projections Do Not Adequately Take Into Account the Commission's Recent Efforts to Curb TRS Fund Abuse.

The principal reason that RLSA projects a need for increased funding is due to the dramatic expansion of IP CTS services. However, those projections, by RLSA's own admissions, do not take into account the appropriate action the FCC has already taken, and that it proposes to take, to curb abuses of IP CTS funding.^{6/} As the commenters recognize, the Commission's actions have been meaningful and those actions, along with those that the Commission is likely to take in coming months, will have an impact on the number of IP CTS minutes of use for which providers seek reimbursement.^{7/}

In particular, in order to check the growth of IP CTS by ineligible users, the Commission recently imposed interim prohibitions against referrals for rewards, interim registration and certification requirements, and an interim rule requiring that captions be turned off as a default on IP CTS-enabled equipment.^{8/} The Commission has proposed to make these rules permanent and has also proposed to adopt labeling rules for IP CTS equipment that would require that new IP CTS equipment bear a label indicating that captioning is to be used only by those people with

^{6/} 2013 Fund Estimate at 28 ("In light of the recently adopted interim measures, RLSA does not expect that any of the above demand projections will produce an accurate reflection of demand during the 2013-2014 funding year.").

^{7/} See Hamilton Comments at 5-8; ITTA Comments at 4-5; IDT Comments at 2-3; NobelTel Comments at 4-6; Sorenson Comments at 2-4; USTelecom Comments at 4-9.

^{8/} See IP CTS Order ¶ 9.

hearing loss who require captions to communicate via telephone.^{9/} The Commission's actions in the *IP CTS Order* were based on its determination that compensation for minutes of use are increasing for calls made by individuals who do not otherwise require TRS services and its finding that the growth rates for IP CTS are unsustainable.^{10/} In view of the Commission's findings, CTIA urged the Commission to make permanent the interim IP CTS rules adopted earlier this year to ensure that only eligible consumers use the services, arguing in particular that the prohibition against referrals for rewards should be made permanent.^{11/}

Others agree that RLSA's estimates do not take into account the Commission's actions. IDT, for instance, points out that the Commission has already determined that the dramatic increase in usage of IP CTS is largely attributable to incentives for referrals to use the service, which the Commission appropriately prohibited in the *IP CTS Order*, and states that RLSA's projections are overly expansionary and unjustified absent consideration of these measures.^{12/} ITTA urges the Commission to reject RLSA's projections given that it largely disregarded the impact the Commission's corrective actions will have on limiting the growth of the Fund.^{13/} Hamilton, NobelTel, Sorenson and USTelecom likewise assert that the Administrator overestimates demand levels by failing to take into account the Commission's recent actions, which are likely to result in a significant reduction in demand and the number of estimated minutes of use.^{14/} Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI") and other

^{9/} *Id.* ¶ 55.

^{10/} *See id.* ¶¶ 6-8.

^{11/} *See* Comments of CTIA–The Wireless Association, CG Docket Nos. 13-24, 03-123 (filed Feb. 26, 2013).

^{12/} IDT Comments at 2-5.

^{13/} ITTA Comments at 2-5.

consumer groups likewise observe that “the proposed IP CTS demand and budget figures seem high.”^{15/}

Not only does RLSA fail to take into account the effect of the interim and anticipated permanent rules (while at the same time acknowledging the likely impact of the rules) but its projections are based on growth rates of individual companies – the very companies whose practices the Commission is attempting to curb.^{16/} Because those companies’ growth rates will likely decrease based on their adherence to the interim and final rules that the Commission adopts in the *IP CTS Order* proceeding, RLSA’s projections are necessarily flawed. Notably, the companies on whose growth rates RLSA relies themselves disagree with RLSA’s estimates. For instance, Sorenson argues that even RLSA’s most conservative projection significantly overstates demand and assumes that the interim rules adopted in the *IP CTS Order* will have a negligible impact on demand, “an assumption that is inconsistent with the real-world impact of the new order.”^{17/}

There is simply no support for RLSA’s projected minutes of use for IP CTS. Therefore, the Commission should – as suggested by commenters – consider the more realistic demand

^{14/} See Hamilton Comments at 2 (“[T]he Administrator currently lacks sufficient data to make an informed projection of the estimated TRS Fund size for 2013-2014, in part because the IP CTS growth forecasts do not take into account recent interim rule changes.”; NobelTel Comments at 6 (“[RLSA] calculated the estimated demand and fund requirement for IP CTS ‘[a]bsent adoption of those measures.’ If the Commission were to accept any of these estimates, the projected funding requirements—and, thus, its proposed contribution factor—will prove largely inflated.”; Sorenson Comments at 1-2 (“RLSA radically over-projects the IP CTS demand—particularly in light of the changes made by the Commission’s interim rules.”); USTelecom Comments at 7 (“[RLSA’s projection] reflects unprecedented growth that clearly fails to account for the dampening effect of any of the Commission’s corrective measures.”).

^{15/} See Letter from Philip Macres, Counsel for TDI, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 13-24, 03-123 (May 13, 2013) (“TDI *Ex Parte*”).

^{16/} *Id.* at 26 (stating that the estimated demand of 409 million minutes was based on “a calculation of the historical growth pattern of each of the individual service providers . . . and then combining the individual company results to estimate the industry wide demand”).

^{17/} See Sorenson Comments at 3.

forecast of 181 million minutes submitted by the industry.^{18/} Not only is the industry projection “a more rational, and likely more accurate, projection of IP CTS minutes of use for 2013-2014 once the impact of the interim rules is taken into account,”^{19/} but it “avoids unnecessary and substantial costs for consumers from whom TRS costs are recovered.”^{20/}

B. In Order to Reduce the Projected Fund Size, the Commission Should Consider Other Ways to Cut Funding Requirements.

If the Commission adopts RLSA’s estimate of, among other things, the projected IP CTS minutes of use, it must look to other ways to reduce the Fund size in order to avoid a doubling of the carrier contribution rate. In the *2013 Fund Estimate*, RLSA seeks \$120 million in funding for an additional one month of “reserve.”^{21/} However, even with the explosive growth of IP CTS, the Fund will have nearly \$100 million in surplus at the end of this funding year. The Commission’s rules do not contemplate intentionally creating a surplus. To the contrary, they specifically provide for the Fund Administrator to borrow funds commercially.^{22/} While the Commission has routinely approved a reserve in its Fund size calculation, the Commission must re-examine this practice if it expects to otherwise dramatically increase the carrier contribution rate. There is no basis for RLSA to collect more from consumers to create a Fund cushion when doing so will create a burden on telecommunications consumers generally.

^{18/} See, e.g., Hamilton Comments at 7; ITTA Comments at 3-5; Sorenson Comments at 2-4; USTelecom Comments at 3-9.

^{19/} Hamilton Comments at 7.

^{20/} ITTA Comments at 5.

^{21/} See *2013 Fund Estimate* at Exhibit 2. See also Comments of USTelecom at 7 (noting that RLSA includes an approximate \$120 million reserve for the TRS Fund and stating that the industry projection “provides a substantial cushion to ensure the integrity of the fund through the July 2013 – June 2014 funding period”).

^{22/} See 47 C.F.R. § 64.604(c)(5)(iii)(B) (“In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years’ contributions.”).

C. In Light of the Uncertainty in the TRS Industry, the Commission Should Calculate the Contribution Based on More Representative Demand Projections and Reevaluate Those Demands in Six Months.

In order to best serve the public interest, the Commission should not only calculate the contribution factor based on the more representative projection provided by industry – that is, 181 million minutes – but it should also reevaluate the expected Fund needs in six months rather than incorrectly estimate the Fund size and contribution factor now.²³ Industry and consumer groups express support for evaluating the Fund on a shorter time period than one year so as to better anticipate its growth and needs,^{24/} and there is no regulatory impediment to specifying a contribution factor for only six months and requiring RLSA to provide updated projections. Indeed, RLSA stated that it intends to monitor the demand projections for each of the services throughout the 2013-2014 Fund year and, on a quarterly basis, submit reports to the Commission “regarding the results of actual operations, and make recommendations, as appropriate to the Commission, regarding the accuracy of the demand projection and any anticipated impact on the Fund balance.”^{25/} Therefore, the Commission should require RLSA to provide updated projections by October 31, 2013, covering the last six months of the Fund year, and make any necessary adjustments mid-year, if required. By doing so, the Commission will reduce the risk

^{23/} As noted in Section II., B., the Fund will have nearly \$100 million in surplus at the end of this funding year and that should cover any shortfalls within the six month review period.

^{24/} See, e.g., Hamilton Comments at 7 (“[T]he Administrator should be directed to make a new projection once it has a full month of IP CTS minutes of use data reflecting compliance by all IP CTS providers with the interim rules.”); TDI *Ex Parte* at 2 (“We asked [during a discussion of the 2013-2014 TRS Estimate] about the possibility of evaluating the TRS fund on a shorter time period than one year – such as on a quarterly basis so as to better anticipate its growth and funding requirements.”).

^{25/} 2013 Fund Estimate at 29.

of unnecessary harm to consumers while allowing for sufficient time to determine the effects of its interim and potentially, permanent rules designed to curb Fund waste, fraud and abuse.^{26/}

III. CONCLUSION

The Commission must ensure that deaf and hard of hearing consumers have access to technologies and services that allow them to communicate on an equivalent basis with conventional voice telephone users. At the same time, the Commission must carefully consider the impact that increases to the TRS Fund will have on consumers who ultimately pay into the Fund. The Commission should therefore reject the unrealistic and burdensome Fund estimate provided by RLSA for the 2013-2014 Fund year and instead base the contribution factor on the use of 181 million of IP CTS minutes as suggest by industry and commenters in this proceeding and require RLSA to provide updated projections by October 31 of this year.

^{26/} While not the subject of this proceeding, CTIA notes that IDT has correctly noted the problems presented by the compressed time frame provided in the rules for the Fund Administrator to propose a new carrier contribution rate, for the Commission to approve the rate and for carriers to implement it. IDT Comments at 8 (“Given that the rates and service charges that will form the basis of their contribution have already passed, carriers are now at a significant disadvantage as to how they can obtain and pay a TRS contribution that has more than doubled when they had no way to predict or prepare for such a significant increase.”). *See also* 47 C.F.R. § 64.604(c)(5)(iii)(H) (requiring TRS payment formulas and revenue requirements to be filed with the Commission on May 1 of each year, to be effective the following July 1). The carriers should be afforded more time to notify customers of required changes and to implement those changes.

Respectfully submitted,

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June 7, 2013